

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter of)	
)	
Kimberley Wright)	Complaint No. R9-2002-0193
Kemper Insurance Company)	For
1 Kemper Drive)	Administrative Civil Liability
Long Grove, IL 60049-0001)	
_____)	

YOU ARE HEREBY GIVEN NOTICE THAT:

- 1) Kemper Insurance Company is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability under Section 13261 (a) and (b) of the California Water Code.
- 2) If Kemper Insurance Company intends to waive its right to a public hearing before the Regional Board, an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of \$2,609 by 5:00 P.M., Tuesday, August 20, 2002.
- 3) A public hearing on this matter has been scheduled at the Regional Board meeting on

**September 11, 2002,
at the Regional Board Meeting Room,
9174 Sky Park Court, Suite 100, San Diego, California.**
- 4) The meeting is scheduled to begin at 9:00 a.m. A copy of the agenda for the September meeting, which provides information pertaining to submittal of information and hearing procedures, will be sent to you under separate cover toward the end of August 2002.
- 5) At the hearing, Kemper Insurance Company will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board.
- 6) At the hearing, the Regional Board will determine the validity of the allegations contained herein, and if the allegations are found to be true, will consider whether or not to assess civil liability in the amount proposed by this complaint, or in some other amount. The Regional Board may refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

ALLEGATIONS

- 7) Kemper Insurance Company is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board). The outstanding fees total \$500 for the facility located at the South-West corner of Winchester Road, Temecula.
- 8) The following facts are the basis for the alleged violations in this matter:
- 9) Waste discharge requirements for discharges of storm water associated with construction activities have been issued to Kemper Insurance Company and an annual storm water fee has been assessed accordingly. Kemper Insurance Company was sent the following invoices:
 - a) Invoice No. 1981 for the amount of \$250 sent July 9 and due Aug. 8, 2001 for Fiscal Year 2001 – 2002 (FY 2001)
 - i) First late notice sent on September 11, 2001
 - ii) Second late notice sent on December 7, 2001
 - b) Invoice No. 845 for the amount of \$250 sent Oct. 18 and due Nov. 17, 1998 for Fiscal Year 1998 – 1999 (FY 1998)
 - i) First late notice sent on December 22, 1998
 - ii) Second late notice sent on January 21, 1999
- 10) The violation for non-payment is deemed to have occurred for a total of 1,709 days based on the following days:

Fiscal Year 2001-2002 from August 8, 2001 to July 31, 2002, or 357 days,
Fiscal Year 1998-1999 from November 17, 1998 to July 31, 2002, or 1,352 days.
- 11) State Board records indicate that Kemper Insurance Company has failed to make payment in response to the invoices and notices.
- 12) On April 24, 2002, the Regional Board sent Kemper Insurance Company a staff enforcement letter that noted the two outstanding annual fees and notified Kemper Insurance Company that failure to pay required annual fees is a violation of provisions of the California Water Code and subject to Administrative Civil Liability Complaint assessing monetary penalties.

MAXIMUM ACL

- 13) Pursuant to Section 13261(b), the total maximum assessment for Kemper Insurance Company is civilly liable is \$1,709,000 (\$1,000 for each day of violation) for the violation cited above.

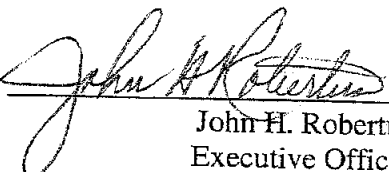
Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

Therefore, the monetary liabilities should be calculated to negate any economic benefit realized by the discharger as a result of the violation. While the fees have remained outstanding, the discharger has continued to enjoy the privilege of discharging waste. During this time, other dischargers have paid the required fees. The discharger has gained an economic benefit in the amount of the fees (\$500) and interest (approximately \$130, assuming 10% per year) which might have accrued on that amount. Therefore, the proposed civil liability shall be within the range of \$630 and \$1,709,000.

PROPOSED CIVIL LIABILITY

- 14) The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, economic savings, as well as the maximum civil liability that the Regional Board may assess. **Civil liability should be imposed on Kemper Insurance Company by the Regional Board in the amount of \$2,609 for the violations cited above.**
- 15) The proposed complaint (\$2,609) is a separate amount and does not include the amount due (\$250) for payment of the delinquent annual storm water fees
- 16) The Regional Board costs for investigating this incident were approximately \$640.

Dated this 2nd day of August, 2002

By: 
John H. Robertus
Executive Officer